



**US Army Corps  
of Engineers**  
Huntington District

# Public Notice

In reply refer to:	Issuance Date:
<b>Public Notice No. 200300961</b>	<b>January 23, 2004</b>
Stream:	Expiration Date:
<b>UN Trib of Given Fork</b>	<b>February 22, 2004</b>
Address comments to:	US Army Corps of Engineers, Huntington District 602 Eighth Street ATTN: CELRHE Huntington, West Virginia 25701-2070

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application:

APPLICANT: Mr. Charles A. Wimer  
Kat's Park Development, LLC  
217 Blue Creek Road  
Elkview, WV 25071

LOCATION: The project is located just north of Elkview, Kanawha County, West Virginia along the southwestern side of State Route 43. The project area includes 4.5 acres of land with approximately 600 linear feet of an unnamed tributary to Given Fork. The unnamed tributary to the Given Fork will be impacted by this project. Given Fork is a tributary to the Elk River, a Section 10 stream.

DESCRIPTION OF PROPOSED WORK: The applicant proposes to place fill material in waters of the United States in conjunction with the creation of 4.5 acres of flat land for the purpose of a commercial development site.

Fill material would be placed below the ordinary high-water mark (OHW) of 550 linear feet of an unnamed intermittent stream in order to facilitate relocation of the stream into a 550-foot 72-inch reinforced concrete pipe culvert underneath the proposed flat area. Fill material would be placed on top of the culvert, consisting of clean, native soil obtained on the project area, with a thickness of 30 to 40 feet above the culvert. Currently, this stream is characterized by a grassy riparian buffer zone and serves as drainage for the southern portion of the existing adjacent road (State Route 43). Habitat information indicates this stream is of poor benthic quality and marginal physical quality, with a West Virginia Stream Condition Index score of 33.7 and a Rapid Bioassessment Protocol score of 120. The development site would have two storm water basins to hold storm water runoff from the site, with permanently vegetated slopes protecting the impacted stream from further impacts of overflow from the basins.

In order to compensate for the loss of 550 linear feet, or 0.16 acre, of the stream, the applicant is proposing to restore and enhance a 600 linear foot section of Given Fork downstream from the project area. Specifically, the applicant would place either boulders or 12" logs in the stream to

create riffle and pool habitat, and will vegetate the riparian zone with trees, consisting of black willow, alder, and autumn olive, and herbaceous vegetation, consisting of a seed mix of orchard grass, birdsfoot trefoil, annual rye, and foxtail millet. Currently, the proposed mitigated stream segment consists of good benthic quality, with a WVSCI score of 69.3, and suboptimal physical quality, with a RBP score of 120. This proposed mitigated stream section is also adjacent to State Route 43 and ends at its junction with US Route 119. Given Fork has been previously impacted by channelization due to development immediately downstream of the proposed project outlined in this Notice. The area of proposed enhancement is currently owned by the West Virginia Department of Transportation (WVDOT).

Except as provided under Section 404(b) (2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. Because the proposed project involves stream relocation, the applicant must provide an alternative analysis that discusses options that will not impact the stream. An alternative considered by the applicant did not involve placement of fill material into waters of the United States. This alternative would involve the creation of approximately 1/3 of the amount of flat land (1.5 acres) needed for the applicant to achieve the overall project purpose.

Plans for the proposed project are attached to this notice. Exhibit 1 shows the two alternatives, including the preferred alternative, for the proposed project.

A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain the certification from the West Virginia Department of Environmental Protection.

The National Register of Historic Places has been consulted and it has been determined that there are no properties currently listed on the register that are in the area affected by the project. A copy of this Public Notice will be sent to the West Virginia State Historic Preservation Office for their review. Comments concerning archaeological sensitivity of a project area should be based upon collected data.

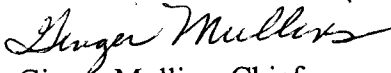
The Huntington District has consulted the most recently available information and has determined the project is not likely to affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species which has been determined to be critical. This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area that would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest that may be adversely affected and the manner in which the interest may be adversely affected by the activity.

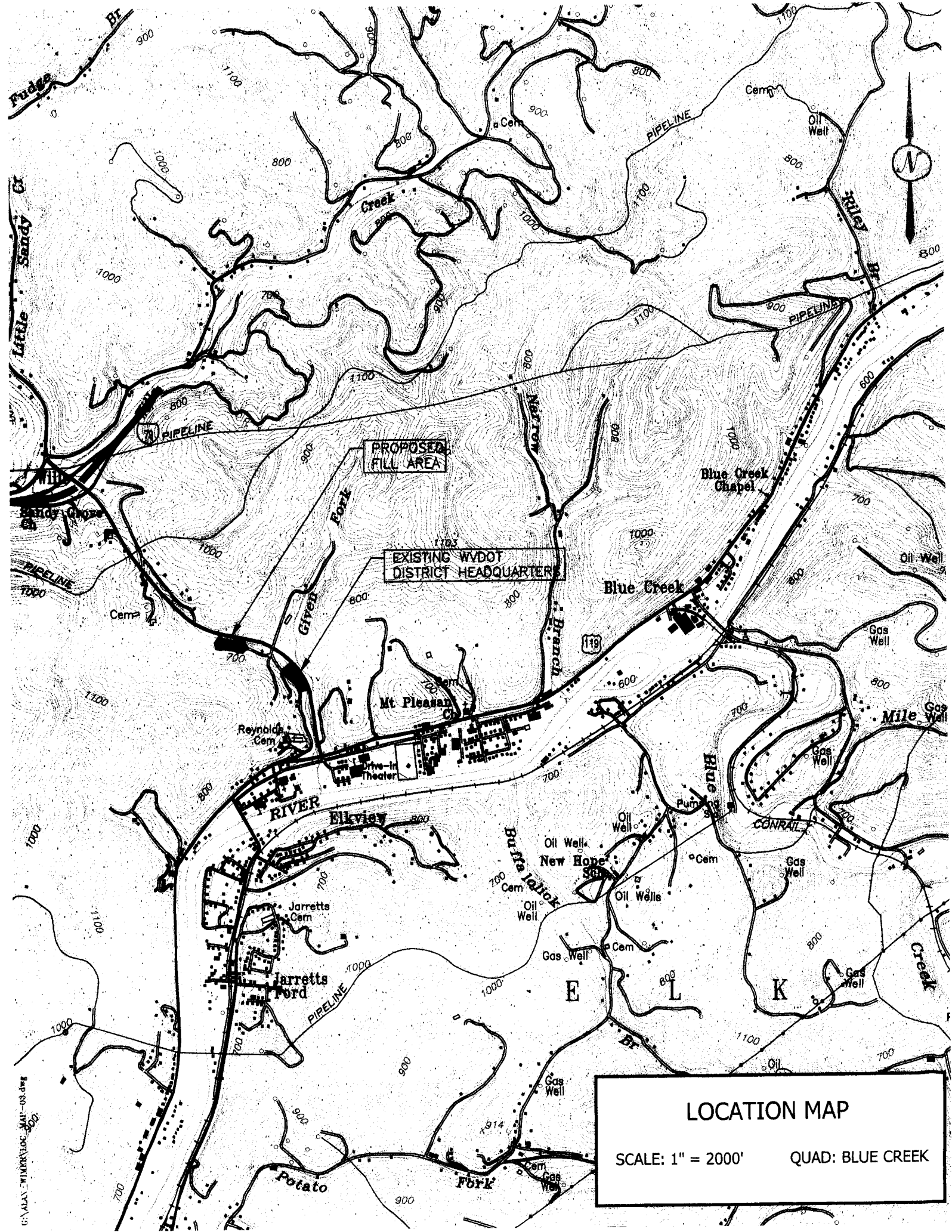
Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

If you have any questions concerning this public notice, please contact James B. Spence at (304) 399-5710.

  
Ginger Mullins, Chief  
Regulatory Branch

(W)



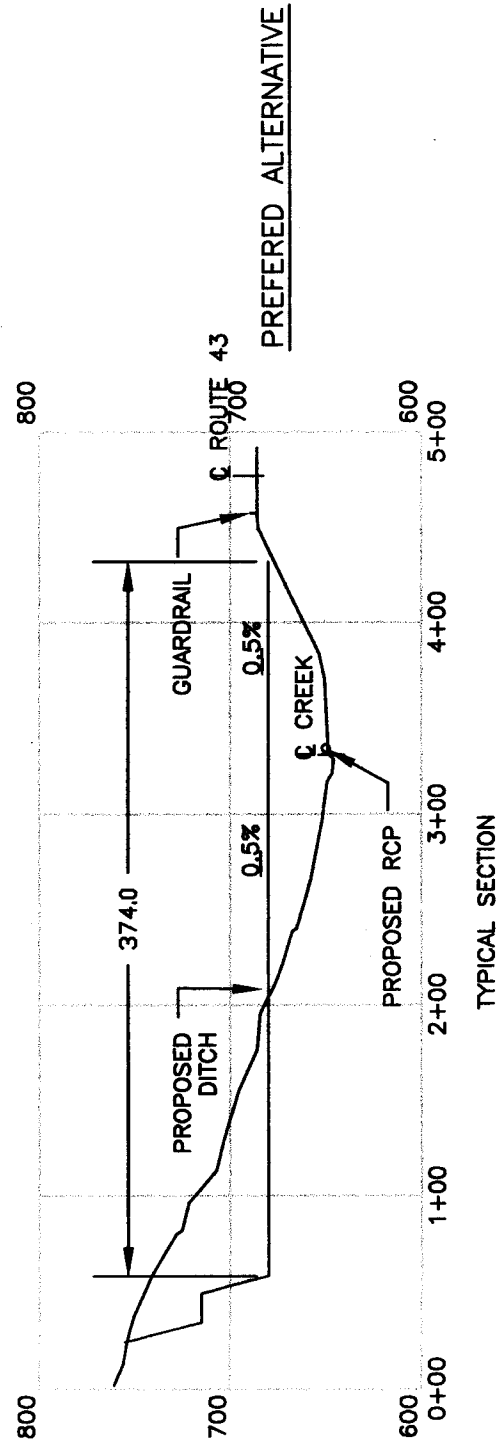
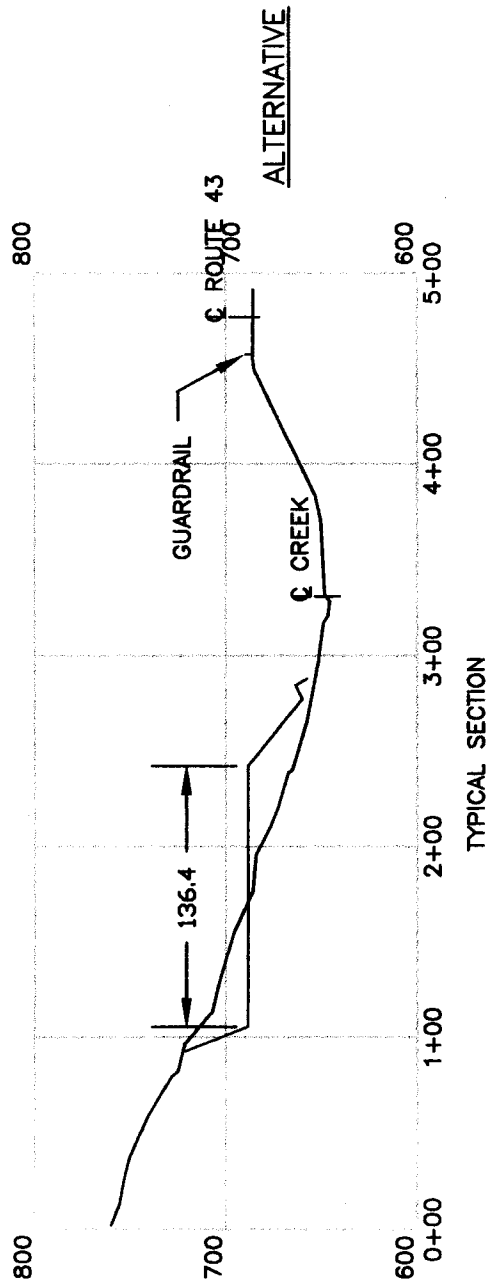
PROPOSED  
FILL AREA

EXISTING WVDOT  
DISTRICT HEADQUARTERS

# LOCATION MAP

SCALE: 1" = 2000'

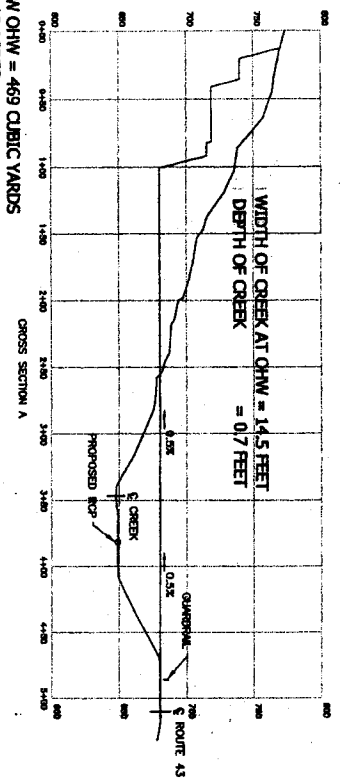
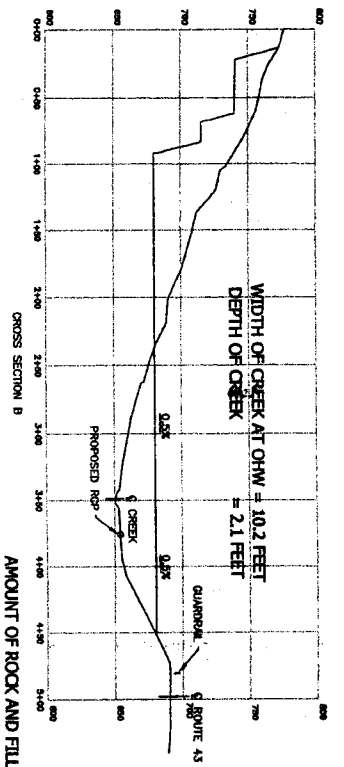
QUAD: BLUE CREEK



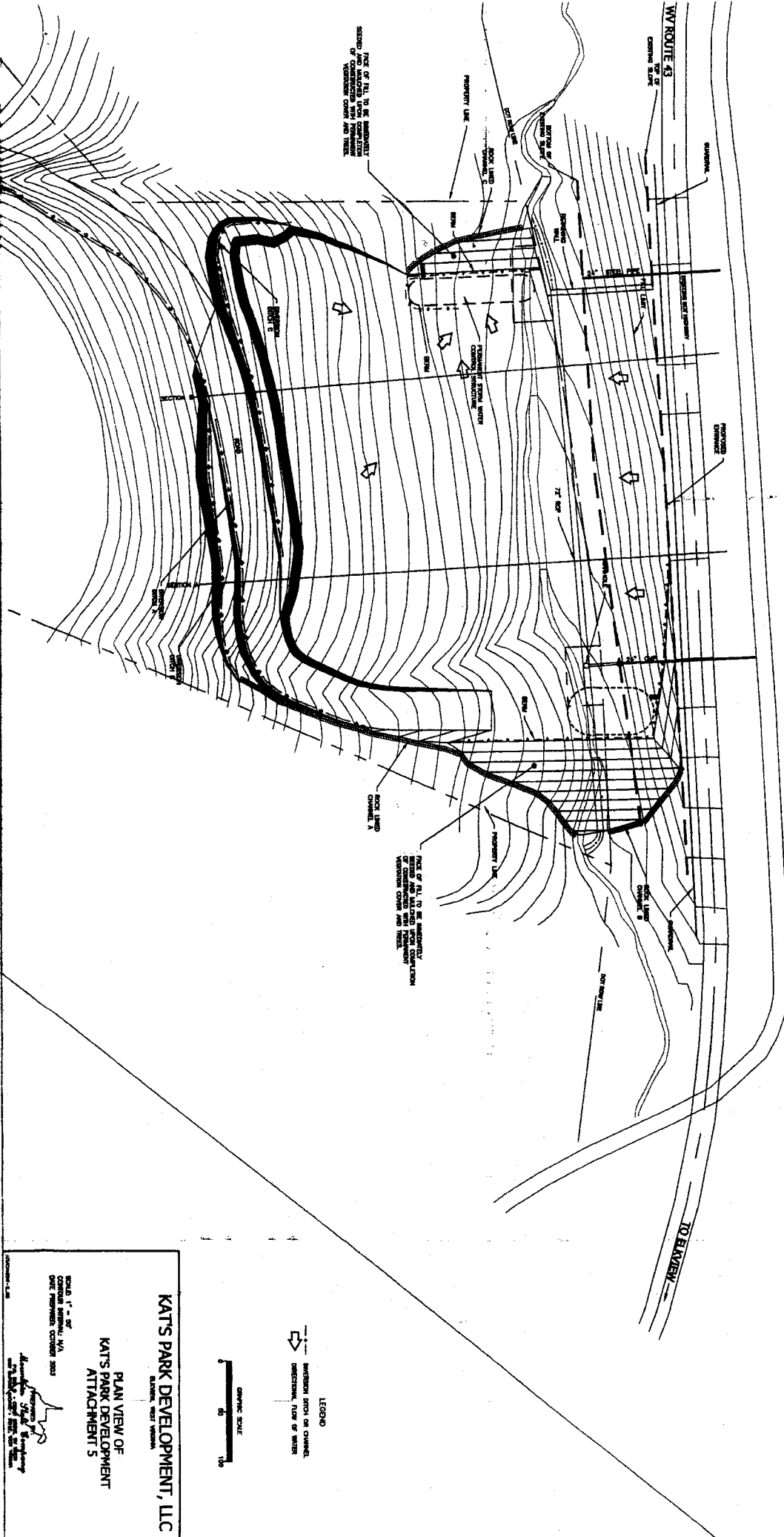
LEGEND  
 — EXISTING GROUND  
 - - - PROPOSED GROUND

# EXHIBIT 1

SCALE: 1" = 100'



AMOUNT OF ROCK AND FILL TO BE PLACED BELOW OHW = 469 CUBIC YARDS  
AREA OF STREAM COVERED = 0.16 ACRES

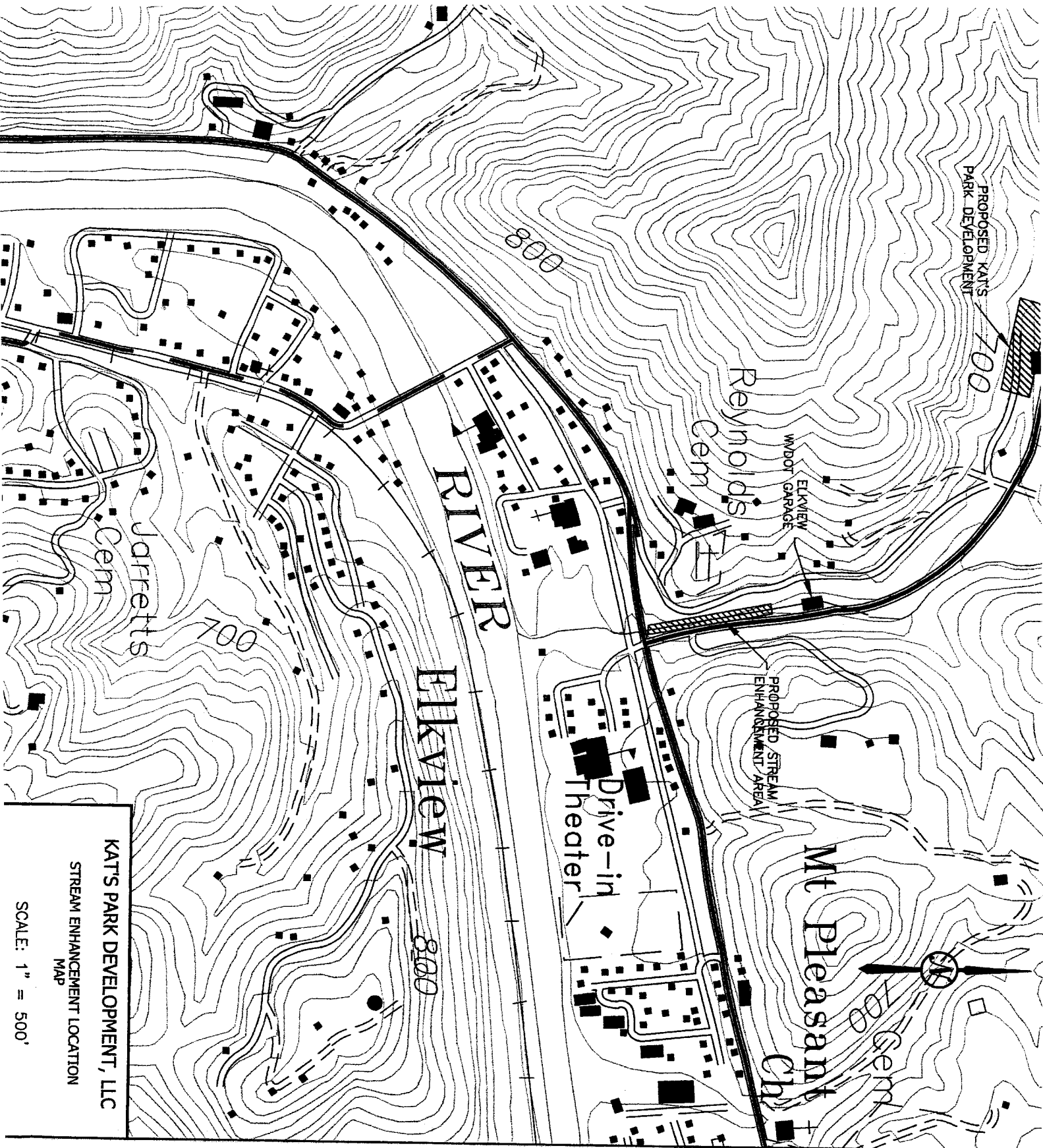


**KAT'S PARK DEVELOPMENT, LLC**

PLAN VIEW OF  
KATS PARK DEVELOPMENT  
ATTACHMENT 5

SCALE: 1" = 50'  
CONTOUR INTERVAL: 4'/A  
DATE PREPARED: OCTOBER 2003

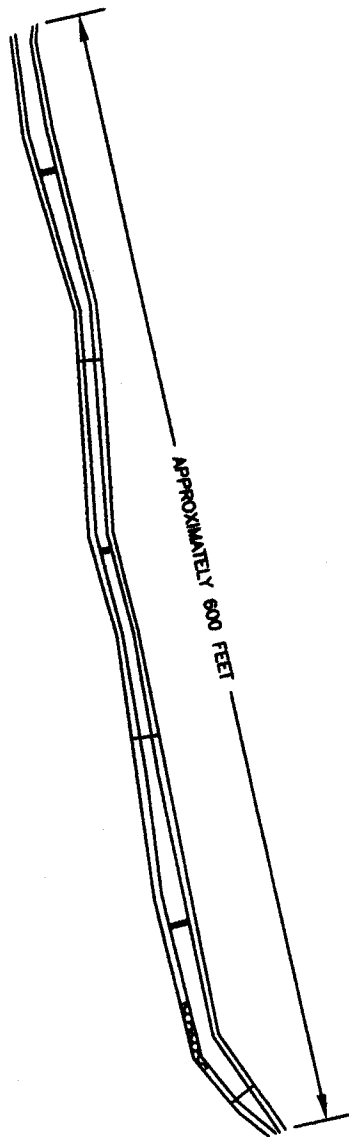
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KAT'S PARK DEVELOPMENT, LLC

STREAM ENHANCEMENT LOCATION  
MAP

SCALE: 1" = 500'



#### LEGEND

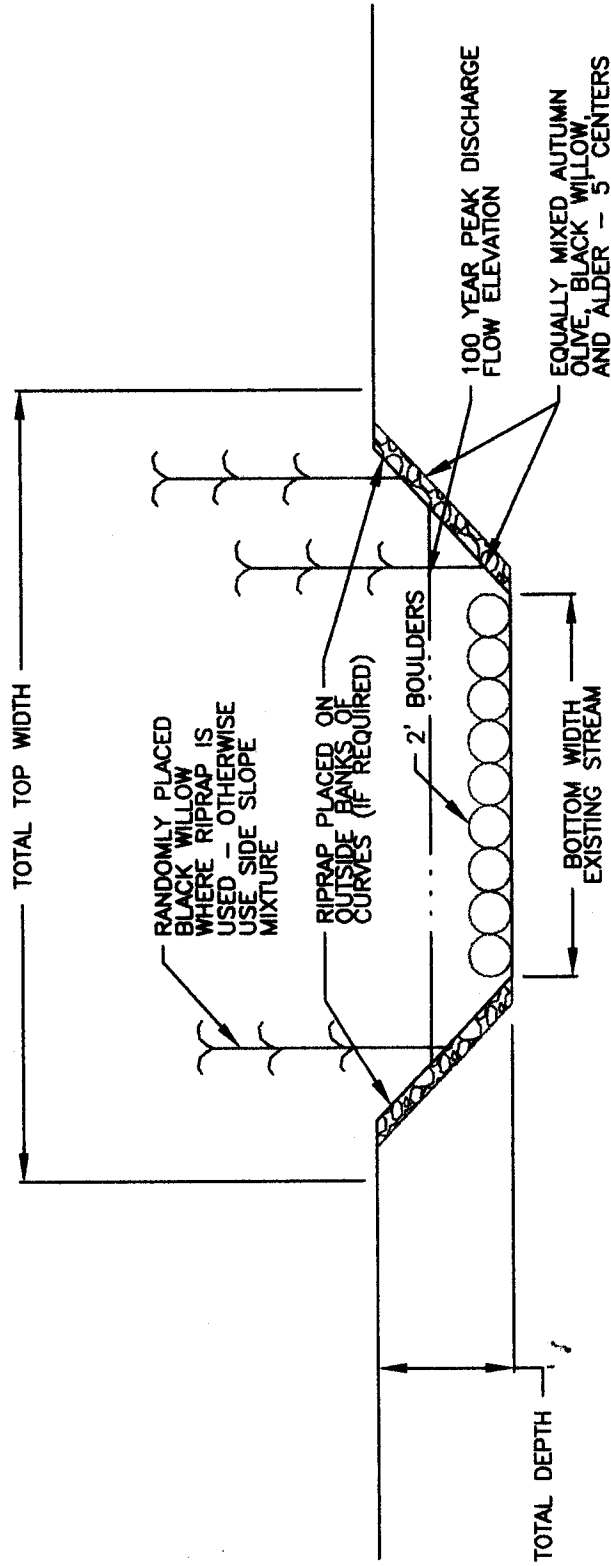
- 12" LOG KEYED/ANCHORED INTO EACH SIDE (RIFFLES)
- BOULDERS — 2' HIGH x 4' HIGH
- ▨ RIP-RAP FOR BANK PROTECTION (IF REQUIRED)

***KAT'S PARK DEVELOPMENT, LLC***  
ELKVIEW, WEST VIRGINIA  
**STREAM ENHANCEMENT**

DECEMBER 2003

NOT TO SCALE





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#### STREAM ENHANCEMENT SEED MIX

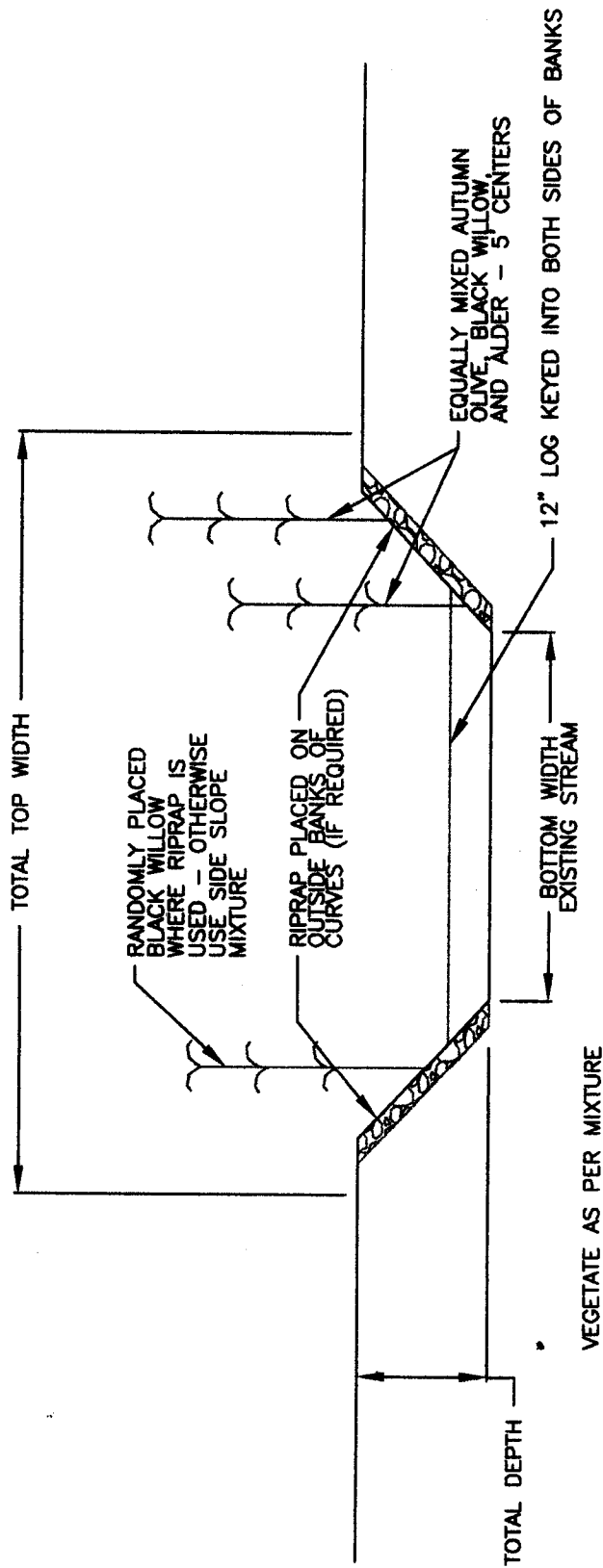
1. LOW COVER = 20LB. ORCHARD GRASS/ACRE  
15LB. BIRDSFOOT TREFOIL/ACRE  
15LB. ANNUAL RYE/ACRE  
15LB. FOXTAIL MILLET/ACRE
2. TREE MIX - SIDE SLOPES = EQUALLY MIXED  
BLACK WILLOW, ALDER, AND AUTUMN OLIVE  
ON 5' CENTERS.
3. FERTILIZER = 600LB./ACRE - 10-20-10

**KAT'S PARK DEVELOPMENT, LLC**  
ELKVIEW, WEST VIRGINIA

#### STREAM ENHANCEMENT TYPICAL CROSS-SECTION

DECEMBER 2003

NOT TO SCALE



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1. LOW COVER = 20LB. ORCHARD GRASS/ACRE  
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